



## U.S. Department of Justice

*United States Attorney  
Eastern District of New York*

*271 Cadman Plaza East  
Brooklyn, New York 11201*

January 6, 2015

By ECF

Richard Ware Levitt, Esq.  
Levitt & Kaizer  
40 Fulton Street  
23rd Floor  
New York, NY 10038

Morris J. Fodeman, Esq.  
Wilson, Sonsini Goodrich & Rosati, PC  
1301 Avenue of the Americas, 40<sup>th</sup> Floor  
New York, NY 10019

Richard Lind, Esq.  
880 Third Avenue, 13<sup>th</sup> Floor  
New York, NY 10022

Sarita Kedia, Esq.  
Law Offices of Sarita Kedia  
5 East 22nd Street  
Suite 7B  
New York, NY 10010

Peyton Z. Peebles, Esq.  
Capitaine Shellist Peebles & McAlister, LLP  
405 Main Street  
Suite 200  
Houston, TX 77002

Steve Zissou, Esq.  
42-40 Bell Boulevard, Suite 302  
Bayside, New York 11361

Re: United States v. Alexander Fishenko, et al.  
Criminal Docket No. 12-626 (S-1) (SJ)

Dear Counsel:

Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G), the government hereby provides notice of the following expert witnesses that the government may call in its case-in-chief at trial. The government also hereby requests reciprocal discovery, pursuant to Rule 16(b)(1)(C), regarding any expert witness which any defendant intends to call at trial. Pursuant to the pretrial disclosure schedule previously set by the parties, any such notice by the defendants is due on or before February 19, 2015.

The government intends to call Brian Baker and Karen Nies-Vogel of the Department of Commerce, Alisa Forby of the Department of State, Directorate of Defense Trade Controls, Alfred Courduff of the Defense Technology Security Administration, and

Kate Muldawer<sup>1</sup> of the Office of Naval Intelligence. These witnesses' testimony will be based upon, *inter alia*, their academic and professional training and experience, their review of applicable laws, policies and procedures regarding United States export controls, and their review of the mechanical specifications of the particular microelectronics exported by the defendants. The opinions offered by these witnesses will not be based on any classified information. In addition, the government intends to call Russian linguists Yana Agoureev and Isabelle Avrutin. A statement of each of these witnesses' qualifications is attached, and a description of their anticipated testimony is set forth below.

**A. Brian Baker**

Brian Baker is the Director of the Electronics and Materials Division in the Office of National Security and Technology Transfer Controls at the Department of Commerce. Mr. Baker will describe the licensing application process employed by the Department of Commerce for dual-use items (i.e., commodities with both military and civilian applications), including the types of information required for a license application, such as end-use and end-user information. He will also testify regarding the defendants' licensing history, and will establish that neither Arc Electronics, Inc. nor any of the individual defendants ever obtained a license from the Commerce Department to export any goods to Russia.

Mr. Baker will testify regarding the function and structure of the Commodity Control List ("CCL") and describe how the CCL is organized into categories that correspond with Export Control Classification Numbers ("ECCNs"). He will describe the particular ECCNs at issue in this case, such as ECCN 3A001, and explain why the commodities exported by the defendants fall within those classifications. Mr. Baker will also establish that each of the dual-use commodities that the defendants are charged with exporting (see Counts 3-15 of the superseding indictment) required a license to be exported to Russia at the time the defendants facilitated their export, but that no such license was obtained.

**B. Karen Nies-Vogel**

Karen Nies-Vogel is the Director of the Office of Exporter Services in the Bureau of Industry and Security of the Department of Commerce. Ms. Nies-Vogel will testify regarding the purpose of the Commerce Department's regulation of exports and the structure of United States export control regulations. She will also describe the methods by which the Commerce Department seeks to ensure compliance with applicable laws and regulations, such as trainings and other forms of industry outreach. Ms. Nies-Vogel will discuss aspects of effective export control compliance programs, and will describe "red flags" which serve to identify suspicious parties and transactions. She will also describe the Commerce Department's "Entity List," which is a list of foreign entities and individuals with

---

<sup>1</sup> The government respectfully requests that, due to safety concerns, Ms. Muldawer be identified in public filings and be permitted to testify using her maiden name.

heightened licensing requirements, and will identify various entities that were added to the Entity List as a result of their dealings with Arc Electronics, Inc. and its employees. Finally, Ms. Nies-Vogel will describe the Commerce Department's voluntary self-disclosure ("VSD") program, including the purpose and function of VSDs.

**C. Alisa Forby**

Alisa Forby is a Supervisory Defense Controls Analyst in the Directorate of Defense Trade Controls ("DDTC") of the Department of State. Ms. Forby will testify regarding the purpose of the State Department's regulation of the export of United States Munitions List ("USML") items, as well as the structure and function of USML regulations. She will also describe the State Department licensing process for munitions items, including registering with the State Department prior to applying for a license and submitting requisite information with the license application. Ms. Forby will describe the defendants' registration and licensing history, and will establish that neither Arc Electronics, Inc., nor any of the individual defendants, ever registered with the State Department or obtained a license from the State Department to export any USML items to Russia. Ms. Forby will also testify regarding the DDTC's conclusion that the particular microelectronic component that certain defendants are charged with exporting in Count Sixteen of the superseding indictment required a license from the State Department for export to Russia at the time of the transaction and that no such license was obtained by the defendants.

**D. Alfred Courduff**

Alfred Courduff is a Senior Technology Analyst for the Defense Technology Security Administration, a component of the Department of Defense. Mr. Courduff will testify regarding the function, capacity and potential applications of the particular microelectronic components that the defendants exported. He will describe the potential military applications of these components, which include their use in radar systems, electronic warfare systems, and weapons guidance systems. Mr. Courduff will explain how these microelectronics are used in these systems, and will describe the capacities that render them fit for military use.

**E. Kate Muldawer**

Ms. Muldawer is an Intelligence Analyst with the Office of Naval Intelligence. Ms. Muldawer will testify regarding specific examples of Russian military systems which use United States-origin microelectronics that are identical, or very similar, to microelectronic components exported by the defendants. She will also describe the domestic capacity for microelectronics production in Russia, and how that capacity significantly lags behind the technology available in the United States. Finally, Ms. Muldawer will describe the function and operation of various government and private entities within Russia that received exports of commodities from the defendants, or that were described by the defendants as the purported end-users of products that they exported.

F. Yana Agoureev & Isabelle Avrutin

Ms. Agoureev and Ms. Avrutin are language specialists in Russian-English language services. The government expects to introduce at trial Russian-language recordings and documents. Ms. Agoureev and Ms. Avrutin are each expected to testify that she translated and/or verified the accuracy of translations of certain recordings and documents. They will further testify that the finalized transcripts they translated and/or verified are true and accurate English translations of the original documents and recordings.

Very truly yours,

LORETTA E. LYNCH  
United States Attorney

By: /s/ Daniel Silver  
Daniel Silver  
Hilary Jager  
Una Dean  
Assistant U.S. Attorneys  
(718) 254-6034/6248/6473